# THE Royal Apology: OR, AN ANSWER TO THE Rebels Plea:

WHEREIN,

The most Noted *Anti-Monarchical*

*TENENTS*,

*First*, Published by DOLEMAN the *Jesuite*, to promote a Bill of EXCLUSION against *King JAMES*.

*Secondly*, Practised by BRADSHAW and the *Regicides* in the actual Murder of *King CHARLES* the *1st*.

*Thirdly*, Republished by SIDNEY and the *Associators* to *Depose* and *Murder* his Present *MAJESTY*,

Are distinctly consider'd.

With a PARALLEL between DOLEMAN, BRADSHAW, SIDNEY and other of the *True-Protestant* PARTY.

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THE

# PARALLEL.

## DOLEMAN

THERE can be no doubt but that the *Common-Wealth* hath Power to **chuse their own fashion of Government**, as also to **change** the same upon reasonable Causes. In like manner is it evident, that as the Common-Wealth hath this Authority to chuse and change her Government, so hath she also to **limit the same with what Laws and Conditions she pleaseth**. *Conference about Succession.* Part. 1. cap. 1. pag. 12,13.

All Law, both Natural, National and Positive doth teach us, That Princes are subject to Law and Order, and that the **Common-Wealth** which **gave** them their Authority for the Common good of all, may also **restrain** or **take the same away again**, if they abuse it to the Common-evil. The **whole Body**, though it be governed by the Prince, as by the Head, yet is it not Inferior but **Superior to the Prince.** Neither so **giveth** the Common-wealth **her Authority** and Power up to any Prince, that she **depriveth** her self utterly of the same, when need shall require, **to use it for her defence**, for which she gave it. *Part. 1st. cap. 4. p. 72.*

And finally the Power and Authority which the Prince hath from the Common-wealth is in very Truth, not **Absolute** but *Potestas vicaria & delegata*, i.e. a Power **Delegate**, or Power by **Commission from the Common-wealth**, which is given with such Restrictions, Cautels and **Conditions**, yea with such plain Exceptions, Promises and **Oaths** of both Parties (I mean between the **King** and **Common-wealth**, at the day of his Admission or Coronation) as if the same [illegible] but wilfully **broken on either part**, then is the **other** not bound to observe his **Promise** neither, though never so solemnly made or sworn. *Part 1st. cap. 4. pag. 73.*

By this then you see the ground whereon dependeth the righteous and lawful Deposition and Chastisement of wicked Princes, viz. **Their failing in their Oath and Promises, which they made at their first entrance**——Then is the *Common-wealth* not only **free from all Oaths** made by **her** of Obedience or **Allegiance** to such **unworthy** Princes, but is **bound** moreover for saving the whole Body, to **resist**, chasten, or **remove** such evil Heads, **if she be able**, for that otherwise all would come to Destruction, Ruine and publick Desolation. *part 1. cap. 4. pag. 77, 78.*

## BRADSHAW

THE People of **England**, as they are those that at the first (as other Countries have done) did **chuse to themselves this Form of Government** even for Justice sake, that Justice might be administred, that Peace might be preserved, so Sir, **they gave Laws to their Governours**, according to which they should Govern, and if those Laws should have prov'd inconvenient or prejudicial to the publick, they had a power in them, and **reserved to themselves to alter as they shall see cause.** *Kings Trial p. 64.*

CHARLES STUART King of *England*; The Commons of *England* Assembled in Parliament, according to the **fundamental Power that rests in themselves**, have resolved to bring you to **Tryal** and **Judgment**. *p. 29.* If so be the King will go contrary to the end of his Government, Sir he must understand that he is but an **Officer of Trust**, and he ought to discharge that Trust, and they are to take Order for the **Animadversion and Punishment of such an Offending Gover-** *p. 65.*

Sir, Parliaments were ordained for that purpose, to redress the Grievances of the People. And then, Sir, the *Scripture* says, *They that know their Masters will and do it not*, what follows? **The Law is your Master, the Acts of Parliament.** pag. *66, 67.*

This we know to be Law, *Rex habet superiorem, Deum & Legem, etiam & Curiam*, and so says the same Author; and truly Sir, he makes bold to go a little further, *Debent ei ponere frænum*, **They ought to bridle him** pag. *65.*

That the said *Charles Stuart* being **admitted** King of *England*, and therein **trusted** with a **limitted** Power. *Vid. Char. p. 30.*

The House of Commons, the **Supream** Authority and Jurisdiction of the Kingdom. *pag. 48.* Which Authority requires you, in the name of the **People** of **England**, of which you are **Elected** King, to answer them, *pag. 36.* Sir you may not Demur the Jurisdiction of the Court—— they sit here by the Authority of the *Commons* of *England*; and all your **Predecessors** and **you** are **responsible to them.** *pag 44.*

For there is a *Contract* and *Bargain* between the **King** and his **People**, and your Oath is taken, and certainly Sir, the Bond is reciprocal.—— Sir, **if this Bond be once broken, farewel Sovereignty.** *pag. 72.*

Sir, though you have it by Inheritance in the way that is spoken of, yet it must not be denied that your Office was an Office of **Trust**: Now Sir, if it be an Office of Inheritance, as you speak of your *Title* by *Descent*, let all men know that great Offices are **seizable and forfeitable**, as if you had it but for a year and for your *Life*, *p. 73.*

And Sir, the People of *England* cannot be so far wanting to themselves, which God having dealt so miraculously and gloriously for, **they having Power in their hands** and their **Great Enemy**, they must proceed to do [illegible] themselves and to **You**. *p. 75.*

## SIDNEY

and other of

### *The True-Protestant Party.*

GOD hath left Nations unto the Liberty of **setting up** such Governments as **best pleased themselves.**

The Right and Power of Magistrates in every Country, was that which the *Laws* of that Country made it to be, *Sidn.* Pap. *p. 2.*

*St. Peter 1 Pet. 2. 13, 14.* stiles *Kings*, as well as the Governours under him, *the Ordinance of Man*, which cannot have any other Sence, **but that Men make them and give them their Powers.** *Hunt. postsc. p. 37.* By all which it is evident; **That the Succession to the Crown is the Peoples Right.** And though the Succession to the Crown is **Hereditary**, because **the People so appointed it**; **would** have it so, or **consented** to have it so; yet in a **particular** Case for the saving the Nation, **The whole Line and Monarchy it self may be altered**, by the **unlimited** Power of the **Legislative** Authority. *Hunts Postsc. pag. 43.* Some Men will talk as if they believed themselves, *That the Legislative Power is in the King*, **when no King of** England **yet ever pretended to it.** A **Legislative** Authority is necessary to every Government, and therefore we ought not to want it, and therefore **Parliaments**, in which our Government hath placed the making of Laws, cannot be long discontinued. *Hunts Postsc. p. 28.*

BRACTON saith that the King hath *three* Superiors, to wit, *Deum*, *Legem & Parliamentum*; that is, the Power Originally in the People of *England* is Delegated unto the **Parliament.** *Sidn. Tryal* p. 23.

All Government is founded in **Trust**, and settled in such a Person, or limited to such a *Family*, for the safety and advantage of the People, as well as of the Ruler.

It is remarkable that there was never a Conveyance of the Crown of *England* to any Person, but upon the **tacit Concurrence**, and with the **Virtual** or Implicite **Consent** of the *People*. And therefore anciently before any King of *England* was actually *Crown'd*, the *People* being first acquainted with the Day appointed for that *Solemnity*, were *three* several times publickly asked, whether they would have such a Person to rule over them. *Let. from Gentl. in the City concerning* D. Y. pag. 13, 14.

Those Laws were to be observ'd, and the Oaths taken by them, having the force of a **Contract** between Magistrate and People, could not be **violated** without danger of **dissolving the whole Fabrick.** *Sidn. Pap.* pag. 2.

If he doth not like his condition, he may **Renounce** the *Crown*; but if he receive it upon that Condition (as all *Magistrates* do the Power they receive) and swear to perform it, he must expect that the performance will be exacted, or **revenge taken by those he hath betrayed.** *Sid.* Try. p. 25.

I will hope there are very few in this Nation so ill instructed, that [illegible] not think it in the Power of the People to **depose a Prince**, who really undertakes to **alienate** his Kingdom, or that really Acts the **Destruction** or the **Subversion** [illegible] of his People. *Great consid. relating to* D. Y. [illegible] *p. 6.*

*To give every one his due*, is to administer Defence to the Innocent, and by Authority of Law to **subdue the Ag-** [illegible] **how great and mighty soever** [illegible] *Id. Pag. 16.*

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TO THE

# READER.

IN the Year 1594. the Jesuit PARSONS published *a Conference* under the Name of *DOLEMAN*. The Design of which *Pamphlet*, as every one knows, was to promote *a Bill of Exclusion* against King JAMES.

And though the Jesuites malice was herein defeated, as to the Person of that *King*; yet how much it influenc'd the Sufferings of his *late Majesty*, is a sad story to repeat. For he who shall peruse the many virulent *Libels*, which first occasion'd, and then fomented that

unnatural *Rebellion*; he will eaſily be inſtructed how that *Conference* was Tranſcribed and Tranſproſed by the *Patrons* of the *Faction*: And to ſpeak in our Modern Language, he cannot but obſerve, That the *Popiſh* DOLEMAN is the Oracle of the TRUE-PROTESTANT Party.

Now that this may not be rejected as a ſlandering Deſign, only to make them odious to Authority, as is commonly Objected; I have here drawn for the Readers ſatisfaction, a ſhort PARALLEL between *Doleman*, *Bradſhaw*, *Sidney* and ſome others. Upon peruſal of which it will plainly appear, that the

Jeſuites

Jeſuites Principles, as managed by *Bradſhaw* and the *Regicides*, did cut off the Head of King CHARLES the firſt.

And ſince the ſame Principles have been tranſcribed by the *Brethren* of the *ASSOCIATION*; we have juſt reaſon to ſuſpect the ſame *Practices* likewiſe: And that thoſe who defend the Murder of King *CHARLES* the firſt, would doubtleſs, *if they had Power in their Hands*, Depoſe and Murder King *CHARLES* the Second.

If any *Republican* ſhall think fit to doubt that the following Diſcourſe is either *Partial* or *Unconcluding*, *i.e.* that I have either ſaid ſomething that is *falſe*, or elſe have omitted in any Inſtance, the ve-

very *Strength* of their *Cause*, let him make known his Grievance. And I do here faithfully promise, upon such notice given, I will (through Divine Assistance) endeavour his Satisfaction.

BRITISH MUSEUM

THE

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BRITISH MUSEUM

THE

# THE Royal Apology: OR, AN ANSWER TO THE Rebels PLEA.

ALthough the *Kings* Title to his *Crown* and Dignity, together with his juſt Right and Authority, *over all Perſons and in all Cauſes*, are beyond Exception eſtabliſh'd, by the Ordinance of God, and the known Laws and Conſtitutions of theſe Kingdoms; yet ſo far hath *Prejudice*, or ſomething worſe, prevail'd with ſome Men (and thoſe not of the meaneſt Rank) as to ſuffer themſelves to be led into a Belief.

*That the Original of all Government is from the People*; and that the Power which *Kings* and Princes have, was derived unto them from the *People* by way of *Pact* or *Contract*. Particularly, That the King of *England* (as appears from his *Coronation-Oath*) having ſolemnly engaged to his People, to maintain Religion, to execute Juſtice, and to keep the Laws and rightful Cuſtoms of the Kingdom; upon theſe Conditions was admitted to the Kingly Power. The which Conditions if he ſhall omit to obſerve (and of this they themſelves will be Judges) they then fancy, that he hath forfeited his *Crown*; and that the *People* who firſt made him *King* may, by their *Repreſentatives* in Parliament, dethrone and *Depoſe* him.

That this is the Scheme of ſome Mens Policy, the many Treaſonable Papers, ſuch as, *The Aſſociation*, *Vox Populi*, *Appeal to the City*, *Coll.* SIDNEY'S Papers, *&c.* together with the late *horrid Conſpiracy* grounded thereupon, do ſufficiently demonſtrate.

And therefore I hope it will be no unſeaſonable *Undertaking*; but may, through Gods

Gods Bleſſing, contribute ſomewhat to ſecure the King's *Liege-People* in their due Obedience, whilſt I endeavour to evince the Falſeneſs and deſtructive Conſequences of theſe *Anti-monarchical* Principles.

Which that I may the more effectually, and with the greater clearneſs perform, I ſhall firſt lay down the utmoſt Strength of their Cauſe in one intire *Objection*, and then endeavour their ſatisfaction in the following *Anſwer*.

## OBJECTION.

THE *Government of England is a mixt Monarchy, conſiſting of* Three Eſtates *King, Lords and Commons: And therefore the King of* England *is not an Abſolute, but a limited Monarch; and as Such is to govern by, and according to, the Laws of the Land, and not otherwiſe: And by the Oath which he hath taken at his Coronation, he is obliged to uſe the* Power, *Truſt and Office then committed to him, for the Good and Benefit of the* People, *and for the preſervation of their Rights and Liberties.*

*Now if the King, thus entrusted to keep the* Laws, *and preserve* Religion, *should be guilty of a wicked Design, to subvert our* Laws, *and destroy our* Religion, *by introducing an arbitrary, Tyrannical Government; he must then understand, that he is but an Officer of Trust: And the* Parliament *of* England (*the Representatives of the* People, *in whom all* Power *doth originally reside*) *they are to take order for the Animadversion and Punishment of such an offending Governor.* Parliaments *were ordain'd to restrain the exorbitant* Power *of* Kings, *and to redress the Grievances of the* People.

*It is very true, what some have said,* Rex non habet parem in Regno. *But this is to be understood in a limited Sense: For though* major singulis, *yet he is* minor universis. *This we know to be* Law, *from that famous* Lawyer BRACTON: Rex habet Superiorem, Deum & Legem, etiam & Curiam.

Which is thus Interpreted by Mr. SIDNEY.

*For this Reason* Bracton *saith; That the* King *hath Three Superiors, to wit,* Deum, Legem & Parliamentum; *That is, The Power originally in the* People *of* England, *is delegated unto the* Parliament. SIDNEY'S *Tryal, pag.* 23.

This

This is, as I conceive, the *Sum* of all that *hath* been, and the utmoſt of what, I ſuppoſe, *can* be ſaid in this matter. To which I return this

## ANSWER.

THAT this Phraſe a *mixt Monarchy*, though ſomewhat frequent in the Mouths of theſe Men, is yet no very plain or intelligible Expreſſion.

For, if by a *mixt Monarchy*, they deſign ſuch a Government, wherein though the *Supream* Power may reſide in one *ſingle* Perſon, yet the Monarch is ſo limited in the Execution of that Power, that he cannot legally perform ſeveral Acts of Soveraignty without the Concurrence of his Subjects (as with us here in *England*, the King neither makes LAWS, nor doth raiſe *Taxes* without his *Parliament*) If this be the utmoſt they deſign, when they call *England* a *mixt Monarchy*; then, though the Expreſſion is very improper (an *arrand Bull*, a flat Contradiction *in adjecto*) yet where we are agreed in the *Thing*, we ſhall not contend about *Words*; but may ſafely grant,

grant, that in this Sense, as now explain'd, *The Government of England is a mixt Monarchy.*

But if by a *mixt* they denote such a *Monarchy*, wherein though the Style and Title of King, together with some Ceremonious Appendices of Royalty, as *Cap* and *Knee*, *Guards*, &c. are indeed invested in One single Person, yet the *Supreme Power* and *Soveraignty* is not solely and intirely in the *Monarch*, exclusively to all others (as with us here in *England*, say these Men, the Soveraignty by way of *Coordination*, is partly in the *King*, partly in the *Lords*, and partly in the *Commons*, and for this reason they are styled the **Three Estates** of the Kingdom) if this be their Notion of a *mixt Monarchy* (as most plainly it is, if *Actions* may interpret *Intentions*) it is then not only false and absurd, but dangerous and destructive. And therefore in this Sense we do peremptorily deny; *That the Government of England is a mixt Monarchy.*

For, *The* Supreme Power *is solely in the* King; *and consequently the* King *is not, by way of Coordination, One of the* **Three Estates**, *but*

*but the* HEAD *and* Soveraign *of them all.*

In order to his Conviction, the *Diſſenting Republican*, who denyes this Truth, may pleaſe to conſider,

That he who ſhall deſire to inform himſelf rightly, where the *Supreme* Power in any *Government* is plac'd; as alſo by whom, how and how far ſuch *Power* hath from time to time, been either *exercis'd* or *reſtrain'd*; he muſt of neceſſity have recourſe to the *Publick Laws* and *Conſtitutions* of ſuch Government. Particularly here in *England*, he who deſigns to be truly inſtructed in this matter; he muſt not receive his notice from the Diſcourſes of *private* men (which are many times fallacious, partial and uncertain) but he ought to conſult the Known Laws and Statutes thoſe *Authentick Records* of the Kingdom.

Now the *Oath of Supremacy*, eſtabliſh'd by ſeveral Parliaments, doth expreſly Declare; *That the Kings Highneſs is the only Supreme Governor of this* Realm, *and of all other his Highneſs* Dominions *and Countries, as well in all Spiritual or Eccleſiaſtical Things or Cauſes, as Temporal.* Words

Words as plain and intelligible as the Wit of Man could deviſe.

From whence 'tis obvious to make this Inference;

That if the King is *Supream*, then he hath no *Superior*; if *only* Supream, then no *equal*. If *over all* Perſons (and as ſuch the 55*th. Canon* enjoyns us to acknowledg him in our Prayers) then *All* Perſons in theſe his Realms, and all other his Dominions and Countries, are *ſubordinate* or *Subject* unto him, and if *ſubordinate*, then none of them, either *ſeverally* or *joyntly* are *coordinate* with him.

Now is it poſſible, after ſo plain and expreſs a Determination, for any Man to doubt; *That the Supream Power is ſolely in the King*? I obſerve it is poſſible: For, ſome Men who will not be ſatisfy'd with Reaſon, do thus urge.

That the Oath of *Supremacy*, being expreſly levell'd againſt the Uſurpations of the *Church* of *Rome*, was conſequently ſo fram'd as to diſcover thoſe who are *Popiſhly* affected.

For, the Perſons taking that Oath are obliged only to Declare; That they Renounce

nounce all Foreign Jurisdictions: *i.e.* They do ſwear; That the *King* of *England* is no Feudatory Prince, and that he holds not his *Crown* in *Fee*, either from the *Pope*, or any *Foraign* Power whatſoever. But what is all this, ſay theſe men, to the *Parliament*? Or, how comes this Oath to be urg'd againſt the Jurisdiction of the *two Houſes*? Since in thoſe very Statutes in which this Oath is enjoyn'd, the *Legiſlative* Power (which doubtleſs is the *Supream* Power) is expreſly Eſtabliſhed in the *Parliament*, as well as in the *King*, in theſe Words.

*Be it Enacted by the Kings moſt Excellent Majeſty, the Lords Spiritual and Temporal and the Commons in this preſent Parliament aſſembled, and by the Authority of the ſame.*

Lords Spiritual and Temporal and the Commons do *Enact* joyntly with the King, and therefore have a *Coordinate Power*.

To which it is thus Reply'd.

That when this Oath of *Supremacy* was firſt framed, the *Pope* being then the moſt noted Uſurper, was for that reaſon more particularly mention'd than any other; but from thence to infer.

That it was deſign'd, by way of *Teſt*,

to discover *Those*, who are *Popishly affected*, is a very great Mistake.

(a) V. 27. Ed. 3. c. 1. 3 R. 2 c. 3. 7 R. 2. c. 12. 16 R. 2. c. 5. 2 H. 4. c. 4. 6 H. 4. c. 1. 24 H. 8. c. 12. 25 H. 8. c. 19. 26 H. 8. c. 1. 37 H. 8. c. 17. Parl. 2. 1. Mar. c. 1.

For, the Supremacy of the Kings of *England*, being the chief *Prerogative* of the *Crown*, was always challeng'd and maintain'd by (a) *Popish* Princes as well as *Protestant*, (b) as appears by these several *Statutes* here mention'd in the *Margent*.

(b) 1 Eliz. c. 1. 5 Eliz. c. 1. 13 Eliz. c. 2.

The Intent then of this Oath was not to discover who are *Papists*, but in plain Terms, who are *Traitors*: And therefore let Mens Pretences to Religion be otherwise what they will; if by scrupling this *Oath*, they refuse to give assurance to the *Government*, that they will be honest and loyal, they are to be esteem'd, if not *Traitors*, yet at least *Traiterously* affected.

And whereas they further urge, That the *Coordinate* Power of the *Parliament* is no way condemn'd by this Oath; which only takes notice of a *Foreign* Usurpation; They are for their satisfaction, desired to consider,

That, since *rectum est Judex sui & obliqui*, Domestick Usurpation is hereby excluded as well as Foreign: The Soveraignty of the

the People as well as of the Pope.

And as to that which is pleaded from the Form of the Statute, *by the Authority of the same*, as if the *Lords* and *Commons* did by *their* Authority, make and enact Laws joyntly with the King; To this I do humbly Answer, That this Expression, if duly consider'd, doth not in the least favour the *Republican* Fancy of a *Coordinate* Power.

Which I shall best express to *vulgar* Capacities (for whom this Discourse is chiefly design'd) thus faithfully by representing the Matter of *Fact*.

Although the *Legislative* Power is *solely* in the King, yet His *Majesty* doth not make Laws, without the concurring Advice and Approbation of his Subjects: For the King, like other Men, being mortal and of limited Capacity, is neither *omniscient* nor *omnipresent*. He cannot be in all Parts of his Dominions at one and the same time, and consequently can no otherwise be acquainted with the Grievances of his Subjects, but by the Reports of others.

To supply this Defect, he calls whom

he pleaſeth (ſuch as he thinks able and faithful to aſſiſt and direct him) to be of his *Privy Councel*; whoſe advice he takes in the Execution of thoſe Laws which are already Eſtabliſh'd.

But ſince all human Laws are liable to Defects (for it is the ſole *Prerogative* of Gods Law, as being the reſult of Infinite Wiſdom and Goodneſs, to be *exceeding broad*; to be fitted to all times, and to anſwer all occaſions) it is therefore ſometimes neceſſary that *new* Laws ſhould be made, and the *old* ones either abrogated and null'd; or elſe reinforc'd with greater Penalties.

In ſuch Caſes, according to the happy Conſtitution of theſe *Nations*, the King ſummons his *Great Councils*; the High and moſt Honourable Court of Parliament; The *Lords Spiritual*, the *Lords Temporal* and the *Commons*; Repreſenting the *Three Eſtates* of the Kingdom; Who coming from all Parts of the Nation, are beſt able to inform His Majeſty of the Grievances of his Subjects; and by what Ways and Methods they may moſt ſuitably be redreſs'd.

In order hereunto; when any Propoſal,

or

or as we phraſe it any *Bill*, hath paſs'd the Approbation of the *Two Houſes*; it is then humbly preſented to the *King* for his *Royal Aſſent*. Which if His Majeſty thinks fit to grant, then **Le Roy le veult**, makes it a Law: But if the King ſhall diſlike the Bill, he then rejects it, with a **Le Roy ne veult**, the King will not paſs it; or elſe in that more obliging Form of Denyal, **Le Roy aviſera**, the King will conſider or adviſe about it.

This is the plain matter of Fact. From whence 'tis very eaſie to underſtand, what this Form of words, *By the Authority of the ſame* doth import, *viz.* not of the *ſame Lords and Commons* (as if either *Lords* or *Commons* had an Authority contradiſtinct from, or coordinate with, the *King*) but by the Authority of the *ſame Parliament*.

The which *Parliament*, as Sir *Edw. Cooke* (a) informs us, conſiſteth of *The Kings Majeſty, ſitting there as in his Royal Politick Capacity, and of the Three Eſtates of the Realm*, viz. *The Lords Spiritual, the Lords Temporal and the Commons*. So that in Propriety of Speech, neither *Lords* nor *Commons* (though in a vulgar Senſe, and to ſome purpoſe,

(a) Inſt. part 4. Cap. 1. f. 1.

purposes, they are sometimes so called,) I say neither Lords nor Commons strictly and properly are a Parliament without the King; who *summoning* them by his Writs; and *presiding* over them as their Head, animates and informs them, and makes them a Legal Parliament, who otherwise, without the Royal Summons, would be no better than an unlawful and riotous Convention.

The Lords and Commons have indeed an Authority, to meet and sit and debate as a Parliament; But they have this Authority *solely* from the King, and not from Themselves or from the People: For, the King Calls them when he pleaseth, and so makes them a Parliament; and he Dissolves them when he thinks fit, and so makes them none.

Again, The Lords and Commons have an *Authority*, but not to Enact or make Laws (for the Words, *Be it enacted* refer only to the King) but to *advise* and *consent* to such Laws as shall be made by the King: And therefore this Phrase, *Be it enacted by the Kings most excellent Majesty, the Lords Spiritual and Temporal, and the Commons*

in

*in this present Parliament assembled*, &c. hath an Ellipsis in it; and is to be read thus. Be it *enacted* by the Kings most Excellent Majesty, by the *Advice* and with the *Consent* of the Lords Spiritual and Temporal and the Commons in this Parliament assembled, *&c. Advice* and *Consent* though for Brevities sake they are not always expressed, yet are still to be understood.

And for the Truth of this, I appeal to the *Form* of our *antient* Statutes (as also to some modern ones) and that not only in the *Title*, but also in the *Preface* and *Sanction* of them. For till the time of *Henry* VIII. the words *Advice*, *Assent* or *Consent* were never omitted. As appears from the Statutes themselves, to which recourse to be had.

From these Premises it plainly appears, *That the Supreme Power is solely in the* King; and, That the Two Houses of Parliament are (not Partners in the Government but) his most Dutiful and Loyal Subjects; as in all their *Petitions* most truly they do stile themselves. And that this Form in our Statutes, *By the Authority of the same*, when rightly understood, doth neither

give

give them Title to make *Laws*, nor perform any other Act of Soveraignty, which may countenance this Fancy of a *Coordinate Power*.

The next Pretence of these *Republican Polititians* (which I find they often urge in vindication of the late *Rebellion*) is this; *That the King is One of the Three Estates*; and from thence they infer: He hath but *One* share in the Government; and that the other *Two* are Co-partners with Him.

The which *Suggestion* being apparently *False*, I shall need to say the less in it's *Confutation*, especially being so happily prevented by a late Learned Hand, *viz. The Grand Question concerning the Bishops Right*, &c.

The judicious Author of which Treatise having first premised;

That the *whole Parliament* assembled, are the best Judges, which are the *Three Estates in Parliament*; and that their Authority is more to be valued, than that of any particular Persons, whether *Lawyers* or others; He then, in many Instances, informs us from the Parliament *Rolls* and publick

publick *Records* of the Kingdom; That the *Three* Estates are the *Lords Spiritual*, the *Lords Temporal* and the *Commons*.

In these Records we read of Impeachments made **before the King, and all the Estates of the Realm.** R. 2. Of Commissions appointed **by the Peers and Lords Spiritual and Temporal, and the Commons of the Kingdom, representing all the States of the Kingdom.** R. 2.

Of such and such things, **advised and appointed by the Authority of the King, assenting the Three Estates of this Realm.** 6 H. 6. n. 24.

The Duke of *Bedford* appear'd in Parliament **before the King and the Three Estates of this Realm.** 11 H. 6. n. 10.

In the Parliament 1 *H.* 6. The *Queen Dowager*, in her Petition, mentions the *Ratification* made in Parliament, 9 *H.* 5. and saith; **It was not only sworn by the King, but by the Three Estates of the Kingdom of England, i.e. by the Prelates, Nobles and other Grandees, and by the Commons of the Realm of England.**

And to add one Instance for latter times in the Parl. 1 *Eliz. cap.* 3. *The Lords Spiritual, the Lords Temporal and the Commons declare,*

**That they do represent in Parliament the Three Estates of the Realm.**

With several others which I shall not mention, but refer all those, who either want or desire satisfaction, to the Book it self.

And as to my plain, honest Reader, who hath neither ability nor opportunity to consult these *Publick Records*, I shall desire him to open his *Common-Prayer-Book*; and to turn to the Office for the 5*th*. of *November*. In the Preface of which he thus reads, *A Form of Prayer with Thanksgiving--- for the happy Deliverance of* **the King, and the Three Estates of the Realm.** And in the *Collect* before the *Epistle*, We acknowledg the Power, Wisdom and Goodness of God, in preserving **the King, and the Three Estates of this Realm assembled in Parliament.**

It thus evidently appearing; That the *King* is not *One* of the *Three Estates*, and consequently, that his Authority is not limited or restrain'd, by the Coordinate Power of the other *Two*; we may with better assurance proceed to examin the Truth of their next Suggestion, *viz*. *That the*

*the* King *of* England *is not an Absolute Monarch.*

In which Inquiry, leaſt I ſhould diminiſh the *Kings* juſt *Right* and *Prerogative* on the one hand, or encroach upon the Subjects *Freedom* and *Liberty* on the other, I muſt neither *affirm* nor *deny* without due Diſtinction.

Now the Kings Power and Authority doth admit of a *Twofold* Conſideration.

For, either we may obſerve it's *efficient Cauſe*, the Spring and Fountain from whence it flows; or elſe may take notice of the *Execution* and *Adminiſtration* of it.

As to the *Firſt* of theſe;

If the Queſtion ſhould be asked; whence hath the *King* this Power to Rule and Govern theſe Nations? Who gave him this Authority?

To this a juſt Anſwer may be ſuggeſted from His Majeſties Royal *Motto*; DIEU ET MON DROIT, *God and my Birth-right have given me theſe* Kingdoms.

If it further be demanded, How *Birth-right* doth Entitle to a Crown? 'Tis then truly replyed *That it is a Fundamental* Law *of* England, *That the Crown doth descend to the next in Blood*; *England* being not an *Elective* but an *Hereditary* Kingdom.

And from hence we are occasionally instructed, how to understand that Controverted *Place* in *Bracton* (which I therefore mention because I find it repeated with great Triumph in several *Pamphlets*) *Lex facit Regem*; the Law makes the King; *The Law*, i.e. *The Law of Succession*. In which Sense doubtless my Lord *Cook* (as I have somewhere read) told King *James*, *That the* Law *set the Crown upon his Head.*

Lib. 1 c. 7. f. 5. and Lib. 3. c. 9. f. 107.

And it is the same Law that set the *Crown* upon the Head of His *Present Majesty*.

For though His *Majesties* personal Qualifications deserve a *Crown*; yet it was not any *Acceptance* or *Consent* of the *People*, expres's'd at his *Coronation* or otherwise, but it was his *Birth-right* only which made him *King*, because Son and Heir apparent of King *Charles* the *First*.

This is the full Import and Meaning of that saying of *Bracton*. But

(But now from hence to infer (as ſome *canting Politicians* have done) That becauſe *The Law*, in this Senſe as now explain'd, *makes the King*; therefore *the Law is Superior to the King*; therefore *the Law hath a Coercive Power over the King*; therefore, *If the King ſhall neglect to Diſcharge his Truſt, the Parliament of* England (*who are not only the higheſt Expounders, but the ſole Makers of the Law*) *can by that Law which made him King, cenſure and condemn him for his Neglect.* I ſay thus to infer, is not only *falſe* and *exploſive* in it ſelf; but *Treaſonable* to the *King*, and *Deſtructive* to the *Kingdom*: But of this, God willing, more fully in it's proper Place. *Brailſhaw's Harangue at the Kings Tryal.*

It may ſuffice at preſent to obſerve, that the Crown of *England* is an *Imperial Crown*, *i.e.* Such a Crown which as to the *Coercive* part, is not ſubject to any human Tribunal or Judicature whatſoever, as moſt plainly appears from our *Law-Books* and *Statutes*.

It was aſſerted in our Laws in the Time of King *Richard the Second*, *That the* **Crown of England hath been ſo free at all times, that it hath been in no** EARTHLY SUBJEC- 16 *R.* 2. c. 5.

TION

TION BUT IMMEDIATELY SUBJECT TO GOD, **in all things touching the Regalty of the ſame Crown, and to none other.**

24 *H.* 8. c. 22. And in 24 *H.* 8. it was declared in Parliament, *That* **this Realm of England is an Empire, and ſo hath been accepted in the World, govern'd by one Supreme Head and King, having the Dignity and Royal Eſtate of the Imperial Crown of the ſame; unto whom a Body Politick — of Spiritualty and Temporalty, been bounden and owen to bear** NEXT TO GOD, **a natural and humble Obedience.**

25 *H.* 8. c. 21. And 25 *H.* 8. It is Declared; *That* **This Realm, recognizing** NO SUPERIOR UNDER GOD, BUT ONLY THE KING, **hath been, and is free from Subjection to any man's Laws, but only to ſuch as have been devized within the ſame.** *V.* 1 *Eliz. cap.* 3. & 1 *Jac. c.* 1. which are very pertinent to be peruſed, in confirmation of theſe preceding Statutes.

And if private Authorities may not ſeem ſuperfluous after the recital of ſuch *Authentick Records*, I might largely confirm this *Supreme Independent Power of the King*, by the repeated *Teſtimonies* of our moſt eminent and noted *Writers*. But

But becauſe I would not be too tedious, I ſhall mention none but the forecited *Bracton* Lord Chief Juſtice under *Henry* the 3*d*. And I the rather take notice of *Him*, becauſe ſome paſſages in his *Works* have been perverted and abuſed, by the *IGNORANCE* or *MALICE* of ill deſigning Men.

From this Learned and Judicious *Author* we are thus inſtructed.

(a) *All Ranks and Degrees of Men are ſubject to the King; but the King himſelf is under none but God. There is none equal to him, or coordinate with him in the Kingdom; ſuch a fancy being wholly inconſiſtent with his* Kingly Power----- (b) *And if any Man hath occaſion to implead the King (ſince no Writ can be taken out againſt him) he muſt then proceed by way of Petition. But if the King ſhall ſtill refuſe to do him right, it will be ſufficient puniſhment for him to expect the Lord as an Avenger.*

(a) *Omnium quidem ſub eo, & ipſe ſub nullo, niſi tantum ſub Deo. Parem autem non habet in Regno ſuo, quia ſic adhiberet præceptum.*

(b) *Si autem ab eo petatur (cum breve non currat contra ipſum) locus erit ſupplicationi quod factum ſuum corrigat & emendet, quod quidem ſi non fecerit, ſatis ſufficeret ei ad pœnam quod Dominum expectet ultorem.*

*Nemo quidem de factis ſuis præſumat diſputare, multo fortius contra factum ſuum venire.*

Vid Bracton de Leg. Ang. Lib. 1. cap. 8. Sect. 5. fol 5.

Doubtleſs

*Doubtless no man should presume to question the Kings Actions; much less to oppose them by force.*

And in his 5*th.* Book *de Defaltis Cap.* 3. *Sect.* 3. he speaks the same Language.

For having put the Case, *That if the King being Petition'd to redress the Grievances of his Subjects, should yet neglect to grant them Justice, what further course the Subject might take for his Relief?* He Rules it thus.

(c) *If the King, who is bound to administer Justice to his utmost Power, will not recal the wrong he did upon a false Suggestion; in this case he injures his Subjects, but no body can force him to do Right; because he hath no Superior but God only. And it is sufficient that we shall have a day of hearing hereafter at a Just Tribunal.*

*V.* Lib. 2. c. 24. Sect. 1. p. 55. & lib. 2. c. 37. Sect. 5. p. 87. & lib. 3. c. 9. Sect. 3. p. 107.

(c) *Quo casu cum Dominus Rex super hoc fuerit interpellatus, in eadem voluntate quod velit tenentem esse defensum cum injuria, cum teneatur Justitiam totis viribus defensare, ex tunc erit injuria ipsius Domini Regis, nec poterit ei necessitatem aliquis imponere quod illam corrigat & emendet nisi velit, cum superiorem non habeat nisi Deum, & satis erit illi pro pœna quod Deum expectet ultorem.*

*Bracton* Lib. 5. *de Defaltis* c. 3. Sect. 3. fol. 368,

But

But here I am Allarm'd with that noted saying of this Author; *Rex habet Superiorem, Deum & Legem etiam & Curiam.*

And there is scarce a *Pamphlet*, pretending either to *Law* or *Latin*, which doth not triumph in this Sentence of *Bracton*. I am therefore oblig'd, for their sakes who may otherwise be misguided, to endeavour the full Sence and Meaning of these Words. Vid. *Sidney's* Tryal p. 23.

In order to which Task, and that he may the better apprehend the clearness of my Answer, I must trouble my Reader to peruse the whole Section.

*De Chartis vero Regiis & factis Regum, non debent nec possunt Justiciarii, nec privatæ personæ disputare; nec etiam si in illa dubitatio oriatur, possunt eam interpretari, & in dubiis & obscuris, vel si aliqua dictio duos contineat intellectus Domini Regis erit expectanda interpretatio & voluntas, cum ejus sit interpretari, cujus est concedere, & etiam si omnino sit falsa propter rasuram, vel quia forte signum appositum est adulterinum, melius & tutius est quod coram ipso Rege procedatur ad Judicium. Item nec factum Regis, nec chartam potest quis judicare, ita quod factum Domini Regis irritetur.*

*Sed dicere poterit quis, quod* Rex *Justitiam fecerit, & bene, & si hoc, eadem ratione quod male, & ita imponere ei quod injuriam emendet, ne incidat* Rex *& Justic. in Judicium viventis Dei propter injuriam.* REX AUTEM HABET SUPERIOREM, DEUM. S. ITEM LEGEM, PER QUAM FACTUS EST REX. ITEM CURIAM SUAM, *viz. Comites, Barones, quia Comites dicuntur, quasi socii* Regis, *& qui habet Socium, habet Magistrum, & ideo si* Rex *fuerit sine fræno, i.e. sine* Lege, *debent ei frænum ponere, nisi ipsimet fuerint cum* Rege *sine fræno, & tunc clamabunt subditi & dicent, Domine Iheſu Christe in chamo & fræno maxillas eorum constringe, ad quos* Dominus, *vocabo super eos gentem robustam & longinquam & ignotam, cujus linguam ignorabunt, quæ destruet eos, & evellet radices eorum de terra, & a talibus judicabuntur, quia subditos noluerunt juste judicare, & in fine, ligatis manibus & pedibus eorum, mittet eos in caminum ignis & tenebras exteriores, ubi erit fletus & stridor dentium.* V. Lib. 2. c. 16. §. 3 fol. 34.

This is the whole *Section*, in which that controverted Paſſage, *Rex habet Superiorem*, &c. is contain'd.

Now

Now as preparatory to a juſt Explication, it will be pertinent to conſider theſe *Two* Things.

*Firſt*, That all difficult and obſcure places in any Author, ought to be determined by ſuch as are plain and obvious; but not *e converſo*. And therefore,

*Secondly*, When we doubt of the true Sence of an Author, it is much more *modeſt* as well as *charitable*, to confeſs our own Ignorance, and to ſay, we do not know what he means, rather than to calumniate and miſtake him, by affixing ſuch a Sence to his Words as he never intended.

And conſequently, it might be a ſufficient *Anſwer* to affirm; That ſince our *Bracton* hath ſo plainly and ſo often told us; *That the King is under none but God. That all Orders and Degrees of Men are Subject to the King. That he hath no equal much leſs Superior. That no man ſhould preſume to queſtion his Actions*, &c. It evidently follows;

That whatever can be underſtood by this *Curia* (whether *Lords* or *Commons*) yet this *Curia* is not Superior to the *King*: It neither gave him his Authority at *firſt*, nor hath the leaſt ſhadow of a Coercive

Power, to limit and reſtrain him. For certainly *that* cannot be the meaning of *Bracton*, which he hath ſo expreſly contradicted in other parts of his *Works*.

But that I may *Anſwer* as well as *Evade*, I now come to explain, what I think to be the true Sence and Meaning of theſe Words, R*ex habet Superiorem*, &c.

The Subject matter of this *Second Book* of BRACTON is, D*e acquirendo rerum* D*ominio*. It explains the nature of *Legal Titles*; and ſets forth the ſeveral ways, by which a man may acquire ſuch a Right and Property in the thing poſſeſs'd as to call it his *own*. And amongſt many others, DONATION as being the chief, is more particularly conſider'd by him.

Now theſe *Gifts* or *Grants* (as he tells us in the beginning of this 16 *Chap. Sect.* 1.) *fiunt in ſcriptis*, *ſicut in Chartis*, *ad perpetuam memoriam*, *propter brevem hominum vitam*, *& ut facilius probari poſſit* D*onatio*. They are for Mortalities ſake, put into Writing, that ſo the D*onee* (ſhould his Title be queſtion'd) by the Evidence of ſuch enrolled Deeds, may ſecure his Poſſeſſion.

Of theſe Grants or Charters, ſome are made

made by the *King*; others by *private* Men. And having largely discours'd of these private Charters, *Sect.* 2. 4. and so on; in this intermediate 3*d. Sect.* he more particularly gives us his Judgment *de Chartis Regiis*; which by way of Eminency are stiled *Charters*.

*De Chartis vero Regiis & factis Regum, non debent nec possunt Justiciarii, nec privatæ Personæ disputare*: Neither the (a) *Justiciarii* nor private persons, have any Commission to dispute the Kings Charters; or to question any other of his Majesties Proceedings. *Nec etiam si in illa dubitatio oriatur, possunt eam interpretari*: For where the Royal Grant is doubtful and obscure, it would be presumption in them to pretend to explain it. *Et in dubiis & obscuris, vel si aliqua dictio duos contineat intellectus, Domini Regis erit expectanda Interpretatio & voluntas; cum ejus sit interpretari cujus est concedere.*

(a) *Who are here meant by those* Justiciarii, *let the learned in the Law determine.*

But if any part of it be ambiguous, and doth admit of a double Sense, than the Kings pleasure (since His Majesty who first made the Grant best knows his own Mind) is the surest and most authentick Interpretation. *Et etiam si omnino sit falsa propter*

*propter raſuram, vel quia forte ſignum appoſitum eſt adulterinum, melius & tutius eſt quod coram ipſo Rege procedatur ad Judicium.*

Moreover ſhould there be ſuſpicion, that any Charter (either by eraſing or corrupt Interpolation) hath been falſely tranſcribed, 'tis the beſt and ſafeſt courſe, to determine the matter before the King himſelf. *Item nec factum Regis, nec chartam poteſt quis judicare, ita quod factum Domini Regis irritetur.* However (as was ſaid before) let no man preſume to cenſure the Kings Charters, or any other of his Proceedings, ſo as to make null and void the Act and Deed of our Lord the King.

*Sed dicere poterit quis,* But here it may be Objected, *quod Rex juſtitiam fecerit, & bene,* If the King will do Juſtice, 'tis well; *& ſi hoc eadem ratione quod male, & ita imponere ei quod injuriam emendet, ne incidat Rex & Juſtic. in judicium viventis Dei propter injuriam.* and ſhould he not do Juſtice, it ſeems that muſt be well taken too, ſince no body dares tell him that he doth amiſs; and accordingly there will be none to admoniſh him to correct his fault, that ſo he may eſcape the Judgment of the living God.

To

To this Objection BRACTON returns an *Answer*, though indeed not ushered in with the usual Formality of a *Sic Respondeo*. And his Answer is this;

*Rex autem habet Superiorem*, &c.

'Tis true indeed, none can controle the Kings Person or censure his Actions (his Majesty being *Supream* over all Persons, and in all Causes) *autem*; but yet we have these encouraging Reasons, that the King will do Justice, and govern his People according to *Right*.

For 1. *Rex habet Superiorem, Deum, &c.* As high and as great as the King is, there is one higher and greater than he, even Almighty God; *The King of Kings and Lord of Lords*. It is therefore much hoped; that a due Sense of this dreadful Majesty (before whose Tribunal the greatest *Monarchs* as well as the meanest of their *Subjects* must one day appear) may over-awe and restrain the King from all unjust and injurious Proceedings.

2. *Item Legem per quam factus est* Rex. And moreover the better to enable the King to do Justice, there is a Law to direct him in his Interpretations, the which

Law

*Law* his Majesty is obliged even in gratitude to observe; since it was the Law which made him King. (But how this must be understood is already explain'd.)

3. *Item, Curiam suam*, viz. *Comites, Barones*; but besides these *Two* preceding Considerations, there is a *Third* Expedient to restrain the King from all unjust and exorbitant Proceedings.

For, as there is a God in Heaven to overawe him; and as there is a Law on Earth to direct him: So likewise he hath his *Curia*, to admonish and advise him, viz. *Comites, Barones, quia Comites dicuntur quasi Socii Regis*; His Nobility, his Earls and his Barons; who by reason of their constant attendance at Court, are admitted into a nearer Familiarity with his Majesty, and are, as it were, the Kings Companions. *Et qui habet Socium, habet Magistrum*; and by such Intimacy as this, they are, in some sort, the Supervisors and Censors of his Actions. *Et ideo si* Rex *fuerit sine fræno*, i.e. *sine Lege, debent ei frænum ponere.* If therefore the King shall omit to observe the Laws; 'tis then their Duty to admonish him of his neglect; saying, SIR, This is the

the Law, this ſhould bridle you; this ſhould limit and direct your Actions. And this doubtleſs they will do, *niſi ipſimet fuerint cum Rege ſine fræno*; unleſs they themſelves have a mind to be lawleſs as well as the King.

But if matters ſhould be brought to this paſs, what ſhall then the poor Subjects do? how ſhall their Grievances be redreſs'd? Shall it not then be lawful to take up Arms (in the juſt Defence of King and Kingdom) to remove theſe evil Councellors from the King? No ſuch matter! *& tunc clamabunt ſubditi & dicent, Domine Ieſu Chriſte, in chamo & fræno maxillas eorum conſtringe*; Our honeſt *Bracton* allows the Subject no other Arms againſt his Soveraign, but the *old Primitive Artillery of Prayers and Tears.*

*Ad quos Dominus, vocabo ſuper eos gentem robuſtam & longinquam & ignotam*, &c. And if the Subjects being under any Oppreſſion, ſhall thus dutyfully refer their cauſe to God, he will then take Care to do them right; and will not only reſtrain, but alſo puniſh their Oppreſſors: As our Author more fully explains to the end of this 16.

*Section*, which I ſhall not need to tranſlate any further, there being no difficulty in it.

If this *Paraphraſtical* Tranſlation (which I thought would moſt naturally lead us to the true ſence of the words) doth not yet fully remove the Doubt; I ſhall then, for the Readers ſatisfaction, give this further Interpretation.

BRACTON in this 2*d. Book. Chap.* 16. §. 3. is diſcourſing (as I have already obſerved) *de Chartis Regiis*. And he tells us; that the *Royal Charters*, when either doubtful or obſcure, are to be determined **coram Rege** *i.e.* in the Courts of *Kings-Bench* and *Chancery*. (For theſe being the *Kings own immediate perſonal Courts*, in one of which the *Kings* of *England* have formerly ſate in Perſon, all *Writs* returnable there run in this Style, *coram nobis*; and all judicial *Records* there are ſtiled, and *the Pleas* there holden entered *Coram Rege*. And therefore this Phraſe in BRACTON *Coram Rege* is, I think warrantably render'd, the Courts of *Kings-Bench* and *Chancery*.

Now if the *Plantiff* ſhall ſuſpect, that the Proceedings in theſe *Courts* are not juſt and

and equal, he may then make his *Appeal*. For the *King* hath not only *Legem*; his ordinary Courts of Juſtice, but alſo *Curiam ſuam*, (viz.) *Comites*, *Barones* His HOUSE OF LORDS. The Cauſe may then be removed by *Writ* of *Error*, or by *Appeal* into the *Houſe of Lords*.

But if the *Party* ſhall ſtill complain that he hath not Juſtice; there is then no other Remedy but *Prayers* and *Patience*.

For, this *Houſe of* Lords being the Supreme aud higheſt Court of *Judicature*, no Earthly Appeal can be made any further. *Siſtendum eſt in aliquo*. In all Judicial Proceedings, *Eccleſiaſtical* and *Civil*, there muſt be *a non ultra*. For, as the *Law* of *Nature* doth inſtruct us, that *Appeals* muſt of neceſſity be allowed (otherwiſe thoſe Injuries which may be occaſion'd, through the Ignorance or Corruption of inferior *Judges* could never be redreſs'd) ſo the ſame Law doth alſo teach us; That *Appeals* muſt not be *Infinite*; *i. e.* There muſt be ſome *Supreme Power*, in whoſe final Determination (be it *right*, or be it *wrong*) all *Inferiors* muſt acquieſce and ſubmit. Otherwiſe, no *Controverſies* could be decided; nay,

there could be no *Government*, nothing but Disorder and Confusion in the World.

These are my present Thoughts of this difficult Passage: And whether I have yet given it's proper Sence is humbly submitted to the Impartial Reader. But whether I *have* or have *not*; the *Republican Objector* is again desired to take notice;

That whatever else can be the meaning of these Words, yet our *Bracton* doth not affirm this *Curia* to be superior to the King; Such an Interpretation being inconsistent with *Grammar* as well as *Loyalty*.

We have this Rule in our *Syntaxis*; that, *If the Relative be referr'd to two Clauses or more, then the Relative shall be put in the Plural Number.*

If therefore this Relative word *Superior* do refer not only to *Deum*, but also to *Legem* and *Curiam*, it should not be *Superiorem* in the *Singular*, but *Superiores* in the *Plural*.

*Bracton* was not only very learned and judicious as to his *Sence*, but also (considering the Age he lived in, and the Subject he discours'd on) very polite and elegant as to his *Style*; and consequently we must not

not ſuppoſe him guilty of ſo groſs a *Solæciſm*, which the meaneſt *School-Boy* is able to correct.

If the Patrons of the Faction, who are very hard to pleaſe, ſhall think fit to Reply; That it is a moſt unuſual and Pedantick Method, to interpret a *Law-Maxim* by a Rule in *Grammar*; and thence are unalterably reſolv'd to inſiſt upon it; That unleſs we can explain, in what Sence this *Curia* is Superior to the King, all that hitherto hath been ſaid on this occaſion is trifling and exploſive;

If, I ſay, theſe *Republicans* will not otherwiſe be *contented*, let them then take it thus. *Rex habet ſuperiorem----- Curiam-----* i.e. The King can do more with the Advice and Aſſiſtance of his *Curia* then without it. Or more plainly thus. *The Kings of* England *have more Power and Capacity in Parliament, then out of Parliament.*

If this will not ſatisfie. *Cras reſpondebo.* For at preſent, I think fit to add no more in this matter.

This paſſage of BRACTON (which hath given us ſo large a Digreſſion) being thus diſpatch'd; we ſhall now return to our former Diſcourſe. 'Tis

'Tis undeniably evident from the Authentick Records of the Kingdom (not to mention private Authorities) *That the King of* England *hath no Superior but God. That His Majesty did not receive his Authority from any Earthly Power. That he is not Fœudatory, either to the Pope or any other Foreign Prince, much less to his own People. That he was not admitted to his Kingdoms with any Limitations or Conditions*; As the Kings of *Poland* and some others are. And consequently, since the Terms *Absolute* and *Conditional* are opposite and contradistinct; If the Kings Power and Authority (with respect to its Original *Efficient* Cause) be neither *Conditional* nor *Dependent*, it is then *Absolute* as well as *Independent*. And therefore we may safely conclude (in this sence as now explained) *The King of* England *is an absolute Monarch.*

But here I expect it will be reply'd (and 'tis a very Popular Objection.)

That the *Coronation Oath*, in which there is a plain *Contract* and *Bargain* between the *King* and his *People*, doth sufficiently intimate; That the *Crown* is Conditional, *i. e.* was conferr'd upon his Majesty with certain

tain Limitations and Conditions. For, the King having promiſed, **to keep and defend the Laws and rightful Cuſtoms of the Kingdom**, &c. He is then publickly ſhew'd to the People; and their *conſent* to his Coronation being firſt demanded; he is, by that ſolemn Action, accepted as their King. Plainly inſinuating, that without ſuch a Promiſe on *his* part, he would not have been accepted on *theirs*. And from hence Mr. SIDNEY (a very Authentick Author with ſome men) doth infer; That there is a mutual Compact between the *King* and his *Subjects*; and if the *King* doth not perform his Duty, the *Subjects* are diſcharg'd from *theirs*. His words are theſe, *That thoſe Laws were to be obſerv'd, and the* Oaths *taken by them, having the Force of a* Contract *between Magiſtrate and People, could not be* violated *without danger of* diſſolving *the whole Fabrick*: Which in plain *Engliſh* is this: If the *King* breaks his Oath, and doth not govern according to *Law*; he then forfeits his Crown, and the People are abſolved from their Obedience.

In Anſwer to which, we are to take notice;

tice; that this plausible *Objection* is raised upon a false Foundation, *viz. That the Coronation Oath makes the* King; which is a most gross as well as dangerous Mistake; the King being as perfect and compleatly *King before* his Coronation as *after*.

'Tis a *Maxim* in our Law, *The King never dyes*: There being no such thing here in *England* as an *Interregnum*. For the very same moment that the *Predecessor* deceaseth, the Rights of *Majesty* descend and fall upon the *Successor*. And herein I am instructed by those eminent *Lawyers*, the Lord Chancellor *Egerton*, and Sir *Edw. Coke*. By the former thus,

*L. Chanc.* Egerton *Postnat.* p 73. *The Soveraignty is in the Person of the* King, *the Crown is but an Ensign of Soveraignty. The Investure and Coronation are but Ceremonies of Honour and Majesty. The* King *is an absolute and perfect King before he be Crowned, and without those Ceremonies.*

By the latter in these Words: *If the Crown descend to the rightful Heir, he is* Rex *before Coronation. For by the Law of* England *there is no* interregnum: *and Coronation is but an Ornament or Solemnity of Honour. And so it was resolv'd by all the Judges,* Hil. 1. Jac. *in the Case*

*Cooks* Inst. *part* 3. p. 7.

*Case of* Watſon *and* Clark *Seminary Prieſts*: *For by the Law there is always a King, in whoſe name the Laws are to be maintain'd and executed, otherwiſe Juſtice ſhould fail.* Thus he,

But that I may effectually convince our *Aſſociators* of their miſtake in this matter, I thus argue *ad hominem.*

Was his preſent Majeſty *actually* King (*i. e.* King *de facto* as well as *de jure*) before his Coronation, or was he not?

If they acknowledg that he *was*; the Cauſe is then decided. But if they ſay he was *not*; I muſt then remind them of another point of *Law*, laid down by that *Oracle of the Law* in the preceding words, *a Pardon granted by a* King de jure, *that is not alſo* de facto *is void.* Now when they have firſt conſider'd; That the *Act of Oblivion* was made before the King was *Crown'd*, I ſhall then leave it to themſelves to determine the Caſe.

Doubtleſs upon *ſecond* Thoughts which are uſually the beſt, they will readily confeſs; That his preſent *Majeſty* was *actually* King before his *Coronation*; and conſequently, That the Oath which he then took, was not any *Condition* preparatory to his admittance to the *Kingly* Power.

*Coronation* then *is but a Ceremony, and no part of his Title* : I ſay, it is but a *Ceremony*; and yet (that I may remove ſome impertinent Scruples againſt it) it is no trifling, inſignificant Ceremony : For,

*Firſt*, The ſolemn *Splendor* in which the *King* appears in that Action (the generality of People being much affected with outward *Pomp*) doth naturally make Impreſſions of awe and reverence towards his *Perſon*.

*Secondly*, The *Oath* which he then takes, may expel all jealous Fears; diſpoſing his *Subjects* chearfully to ſubmit to his future *Government*. For when the King (who is not reſponſible to *them* for any of *his* Actions) ſhall condeſcend thus *publickly* to promiſe his People, in the Preſence of that God who gave him his Truſt (and to whom alone he muſt render an Account for the management of it) That he will govern his Subjects according to *Law*; That he will preſerve *Religion* from Hereſy and Schiſm; defend their *Perſons* from wrong and violence; ſecure their *Eſtates* from Fraud and Rapine: Such aſſurance as this, muſt needs enlarge their Affecti-

ons

ons to their Prince; make their ſubmiſſion more hearty; their Obedience more chearful, ſince under his Government (if it is not their own Fault) they may rationally expect to *live a quiet and peaceable Life in all Godlineſs and Honeſty.*

It appears, I hope, from theſe Premiſes (notwithſtanding this or any other Objection to the contrary) That the Kings Power, in reſpect of it's Original, is *Abſolute*, i.e. He received it from none but God. Neither from the *Pope*, nor any other *Foraign Prince*, much leſs from his own People.

But now when we ſpeak of the Kings Authority, with reſpect to the *Execution* and *Adminiſtration* of it, the Caſe is very different. For the Kings of *England*, out of their abundant Grace and Favour, and to make their *Government* more eaſie and acceptable to their Subjects, have ſuffer'd themſelves to be ſo limited in the *Exerciſe* of their Power; That they can neither make *Laws*, nor raiſe *Taxes* but in *Parliament*; much leſs can they pretend to take away the *Life*, or diſpoſe of the *Eſtate* of the meaneſt of their Subjects but by due

course of *Law*: And therefore in this *second* Consideration of his Authority, *viz.* the *Execution* and *Administration* of it; *The King of* England *is not an Absolute but a limited Monarch.*

And indeed, if these *Republicans* were not much more forward, to remind the *King* of his Duty than to discharge their *own*, these things did not need to be repeated. For the *King* hath very often most gratiously promised; That he will govern by, and according to, the Laws of the Land and not otherwise: And that he will use the Power, Trust and Office committed to him, for the good and benefit of the *People*, and for the preservation of their Rights and Liberties. All this is readily granted, in the very words of the *Objectors*.

Only this Phrase, *That he will govern according to the* Laws, **and not otherwise** for the avoiding of mistakes, must be a little explained.

There are some Men, either through Ignorance or Malice, who have fancied; because the King is obliged to govern *by Law*, that therefore he must always *act* accord-

according to the *Letter* of it: So as that it ſhall not be in his Power, *for inſtance* (eſpecially when it is their *Intereſt* to reſtrain him) either to *Pardon* Capital Offenders; to *Change* the manner of their Death; or to *mitigate* the rigour of the Law on any other occaſion. And, *in fine*, theſe confident *Reformers* (who trade in *Poſt-ſcripts* more than *Bracton*) do talk of the *Kings Prerogative* at ſuch a rate; as if it were an *Arbitrary, Illegal Encroachment*; and are ſo extravagant as to fancy; That by diminiſhing the *Kings Prerogative*, they advance the *Laws*; and that to oppoſe the *King*, is to defend the *Kingdom*.

In charity therefore to theſe men, and to rectify their miſtakes, I ſhall briefly lay down the nature of the Kings *Prerogative*: What it is? how it comes to be Eſtabliſh'd? And whether, as is pretended, it be deſtructive to *the Liberty of the Subject*.

The Word (*a*) *Prerogative* (to omit other Significations Foreign to our purpoſe) doth properly denote; *ſome ſpecial peculiar Priviledg or Preheminence, granted by Law*. Hence the *Kings Prerogative* is very fitly ſtyled

(*a*) Jureconſ. *hac voce varie utuntur: modo pro authoritate & eminentia: quadam modo pro jure quodam præcipuo, ſpeciali ſeu privilegio*, Gal. Lex Jurid. verb *Prærogat.*

styled by Sir *H.*(b) SPELMAN, *Lex Regiæ Dignitatis*, which in (c) Sir *Edw. Cooks* words may be thus Translated. *The Royal Prerogative legally extends to all Powers, Prehemminences and Priviledges, which the Law giveth to the Crown.* And *Littleton*, saith our Author, *speaketh of the Kings Prerogative but twice in all his Books*, viz. §. 125 & 128. *and in both places as part of the Laws of* England.

(b) *Spelm. Gloss. Prærog. verb.*

(c) 1 *Instit. cap.* 5. *sect.* 125. *p.* 90.

From whence our *new Politicians* may please to observe. *That the Kings Prerogative is established by Law*; and his Majesty hath as good Law for his Royal Prerogatives. viz. *The descent of the Crown to the next in Blood*: *The Power of Calling and Dissolving Parliaments*: *The Negative Voice*: *The Power of the Militia*: *Pardoning Offenders*, &c. I say His *Majesty* hath as good *Law* for these and all other his *Prerogatives*, as any *Subject* hath for his *Paternal Estate*.

Whoever therefore shall presume to dispute these *Priviledges* of the *Crown*, he must not think me uncharitable whilst I tell him, He is an *Enemy* to the fundamental Laws of *England*, and a *Betrayer* of the Rights of the Kingdom.

If

If the Case be thus, may some say; If these *Royal Prerogatives* are so sacred as not to be touch'd; it would then be a very suitable undertaking to enlarge your, *&c.* and to acquaint us more distinctly what they are, and where we may find them.

In answer to which Demand we are thus instructed by that Loyal Judge JENKINS, (a) *The Kings Prerogative and the Subjects Liberty are determined and bounded, and admeasured by the written Law what they are. We do not hold the King to have any more Power, neither doth his Majesty claim any other but what the Law gives him.* (a) *Jenk. Rediv.* p. 136.

The right method therefore to be inform'd in this matter, is to search the written Laws, with the learned Interpretations upon them. For though these Statutes are not *Constitutive* of the Royal Prerogatives (*All* (b) *Kings had them*; *the said Powers have no beginning*; *i. e.* They are so antient we cannot trace their Original) yet they are *Declaratory* of them. (b) *Jenk. Rediv.* p. 4.

I say, though these Priviledges of the Crown are most of them *antecedent* to our *Acts* of Parliament, and the *written* determined Cases of our Laws (and consequently

ly are not primarily eſtabliſhed by them) yet they are ſo often either explained, confirm'd, or otherwiſe there mention'd; that he who is converſant in thoſe publick Writings muſt needs know what they are.

But ſince every one hath not the *Leiſure* or the *Ability* for ſo laborious a Task; thoſe therefore who ſhall deſire *Compendio ſapere*, they may pleaſe to peruſe a little Treatiſe called *Jura Coronæ*; or *His Majeſties Royal Rights and Prerogatives Aſſerted*. And amongſt ſeveral others there mentioned and explained, they will find this Prerogative.

(a) *Jur. Coron.* p. 84. That the King hath Power, in many caſes, to Diſpenſe with the Laws: And that *no* (a) *Act of Parliament can bind the King from any Prerogative, that is ſolely and inſeparably annext to his Sacred Perſon and Royal Power; but that he may diſpenſe with it by a* non obſtante.

The Reaſon of which *Prerogative* (which to ſome unthinking Men may ſeem extravagant) is plainly this.

All human Conſtitutions are liable to Defects: And there was never any *Law* yet framed with ſuch *Policy* and Skill, which might not, on ſome occaſion or other, be burthenſome to the *Subject*. For particular

Caſes

Cases and Contingencies are so infinitely various, that it is impossible for *human* Wisdom to foresee or prevent them.

And therefore it is absolutely necessary; That there should in all Governments be some *Power*, Superior and *Paramount* to the written Laws: By whose Authority the Subject might be reliev'd and pardon'd; when the nice and strict Observance of the Law (through some unexpected Event) might be grievous to *himself*, or destructive to the *Publick*. And (*b*) *this Power of dispensing with particular Laws* (as the learned Bishop *Sanderson* informs us) *is such a Prerogative, as without which no Common-wealth can be well govern'd; but Justice would be turn'd into Gall and Wormwood: Nor can the Supream Governor, without Forfeiture of that Faithfulness which he oweth to the Publick-Weal divest himself thereof.*

(b) Bish. *Sanderson's* Judg. of subm. to Usurp. p. 18.

If some Men (who are very unwilling to give the *King* his Due) are still dissatisfied in the point; the present posture of Affairs here in *England* may then fully convince them.

We all know that according to the Law *High-Treason* is punishable with

Death. And the Judgment of the Court, on such occasions, is to be *Hung'd, Drawn and Quarter'd.* This is Law. Let me therefore ask these Men. Can the *King* by his *Prerogative* dispense with this Law, so as to free the *Criminal* from the Punishment (*a Toto* or *a Tanto*) or can he not? If they say *not. Ipsi viderint.* Let them look to that who are most deeply concern'd.

But if now at the last they are grown so considerate, as to say that he *can*: Give me leave then to expostulate with them, concerning that late Instance of the unfortunate *Lord Stafford.*

When his *Majesty*, out of Compassion to that *Noblemans* Person and respect to his *Quality*, had changed the manner of his Death, and given him the favour to be Beheaded: What a noise was then raised, *That the Law must be observ'd*? What Fears and Apprehensions of *Arbitrary Power!* What a Tumult did those *scrupulous Sheriffs* make on that occasion, by Petitioning the *Two Houses*; Whether the Kings *Writ* ought to be obey'd? But what Answer they receiv'd both from *Lords* and *Commons* is sufficiently known.

I.

I shall make no *Reflections* upon it, tho indeed the Impertinence of that Action (in which I doubt they were encourag'd by some greater than themselves) might deserve a *Remark*.

From these Premises it is evident, That there is Lex *Coronæ*, a Royal Prerogative granted by the Common Law to the Crown of *England*, *Superior* to all written Laws. By virtue of which *Prerogative-Law*, the King hath Authority (on emergent occasions, and when such *Dispensation* may promote the ends of Government) to *Dispense* with most *Statutes* or *Acts* of Parliament. *Salus populi suprema Lex esto*; when rightly understood is a full proof of this Assertion.

As therefore on the one hand;

When *Sedition* is rampant, and *affronts* the Government; when the *Mercy* of a King shall be voted his *weakness*; and his Royal compassion and unwillingness to *Punish*, shall have this Gloss put upon it; *He dares not do it.*

As in such a Case, Reason of State (which is *Salus Populi*) does require, That some should be executed *in terrorem*; to re-

preſs the inſolence of others; So on the other hand,

When Tumults are abated; when Faction is broken, and that Men begin to acknowledg their Miſtakes, and return to their Wits: If under ſuch inviting Circumſtances as theſe, the King out of his Grace and Mercy, ſhall either *Pardon* a Traitor, or abate the *rigour* of his Sentence, who will pretend to ſay, that ſuch undeſerved Favour is *Illegal*? Or that the King, whether he *pardon* or *puniſh*, doth not *govern*, in both Inſtances, *according to Law*?

The Objectors go on.

*If the* King *thus entruſted to keep the Laws and preſerve Religion, ſhould be guilty of a wicked Deſign, to ſubvert our Laws, and deſtroy our Religion; by introducing an Arbitrary, Tyrannical Government; he muſt then underſtand, that he is but an* **Officer of Truſt.**

All this is granted; If the word **Truſt** do only refer to *Almighty God*, but not to the *People*.

The *King* doth chearfully acknowledg, that he is *Authoriz'd* and Deputed by the *moſt High*, to govern theſe Nations; and that he muſt render an Account for ſo great

great a Truſt committed to his charge. And though the King hath many Enemies, both *Spiritual* and *Temporal*, yet his Support is this. He who gave him his *Commiſſion* is able to Protect him. He hath hitherto very ſignally preſerv'd him. And it is the conſtant, hearty *Prayer* of all *Loyal* Subjects; That his God, and the God of his *Fathers* will preſerve him ſtill. His Majeſty hath indeed many *Enemies* (and good Princes did never want them) but *in the Mercy of the moſt High he ſhall not miſcarry.*

But if this **Truſt** do refer to the *People*, as if the Kings Power and Authority were derived to him from the *People* by way of *Pact* or *Contract*: Let them then explain, *Who* are this People, with whom he did thus Contract? *When* was this Bargain made? *What* are the Conditions? *Before* what Witneſſes? *Who* muſt *Judge* of the Delinquency? *VVhere* are the *Records* of theſe Tranſactions to be peruſed?

If no Evidence to confirm any of theſe Inſtances; the Caſe is then decided by that known Maxim, *Idem eſt non eſſe & non apparere*. This *Fundamental Contract of the Nation*, is only a hard Word to amuſe the vulgar

vulgar. We know not *what* it is, nor *where* to find it.

But it follows in the Objection.

*The Parliament of England (the Representatives of the People, in whom all Power doth Originally reside) they are to take Order for the Animadversion and Punishment of such an Offending Governour. Parliaments were ordain'd to restrain the exorbitant Power of Kings and to redress the Grievances of the People.*

The Sum of which charge is this.

There is a Coercive Power over the King. Which Power (Mr. SIDNEY tells us) *Originally in the People of England, is delegated unto the Parliament.*

*Sidney's Tryal. p. 23.*

To which I do thus Answer.

That though his *Majesty* hath a just esteem for *Parliaments*; and thinks the Parliament of *England* the happiest Constitution that ever *Nation* did enjoy; and hath graciously assur'd us; That no *Irregularities* of Parliaments, shall make him out of Love with *Parliaments*; but that he will have frequent *Parliaments*: Yet such an extravagant Power of Parliaments as is here pretended, is such height of *Treason*; as deserves a *sharper* Confutation than can be given it from this Treatise. As

As to the point of *Non-Resistance* (most seasonable to be enforc'd at this time) I did once design very fully to have enlarg'd upon it. To have shew'd its Obligation from all Laws *Natural*, *Positive*, *Divine*, *Human*. As also to have Answer'd the most Popular Pleas for such *Resistance*. But I am so happily prevented by the Learned Labours of others (particularly my *Lord Bishop of Winchester*, Dr. *Falkner* and Dr. *Sherlock*; who have indeed exhausted that Subject) that I shall give no further trouble; but conclude my short Discourse with this following Argument.

*The Supream Power must not be resisted*;

*But the King of England hath Supreme Power*;

*Therefore His Majesty cannot lawfully be resisted.*

The *Proposition* is the voice of Nature. There can be no *Order* nor Government, unless this Truth be admitted. Reason tells us; *Par in parem non habet potestatem*, much less hath an Inferior a Coercive Power over his Superior.

To which let me observe; That even the late *Rebels* themselves were convinc'd in this matter. For, to vindicate their former *Treasons*, and to patronize their intended

ded *Murder* of that *Blessed Prince*, they voted, *Jan.* 4. 1648. Resolv'd, *That the People are (under God) the Original of all just Powers. That the Commons of England Assembled in Parliament, being chosen by, and representing the People, have the Supreme Power in the Nation. That whatsoever is Enacted or declared for Law by the Commons in Parliament hath the Force of a Law, and the People concluded thereby, though consent of* King *and* Peers *be not had thereunto.*

Plainly insinuating, That whilst the Subjects of *England*, according to their Duty, did acknowledg the *Supreme Power* to be in the King, they must needs apprehend, That the *War* was *Rebellion*; and his pretended *Judges* were *Traitors*.

And as to the *Assumption*, viz.

*That the King of England hath Supreme Power*; this, I hope, hath been so fully prov'd in this little Treatise, that I might suppose the *Conclusion* without any further Enlargement.

But because some late Seditious *Pamphlets* have very impertinently advanc'd the *Power* of Parliaments; I shall, *ex abundanti*, thus undeniably convince them, *That the Parliament of* England *is Subject to the* King.

Mr.

Mr. SIDNEY Informs us, *That the Right and Power of Magistrates in every Country, is that which the Laws of that Country make it to be.* If therefore it do appear by the *Laws* and *Statutes* of the *Kingdom*, *That the Parliament of* England *is Subject to the King*, then the Controversy is at an End. Sidney's Paper p. 2.

For Proof of this, they are desired to Consult, 12 *Car.* 2. c. 30. Where the *Lords* and *Commons* thus Petitioned to his *Majesty*.

We your Majesties said Dutiful and Loyal Subjects, the Lords and Commons in Parliament Assembled, do beseech your most Excellent Majesty that it may be Declared; That by the undoubted and fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons, nor both together in Parliament, nor the People Collectively or Representatively, nor any other Persons whatsoever ever had, have, hath or ought to have any Coercive Power over the Persons of the Kings of this Realm.

Words so plain and undeniably evident that they are not capable of any further Explication.

Only it will be pertinent to observe *Two* Things.

*First*, the *Lords* and *Commons* do not here petition, that it may be *Enacted*, but that it may be *Declared*; intimating that the Kings Supremacy was not *first* eſtabliſh'd in this *Statute* (as if before the making of this *Act*, the Parliament had been Superior to the King) but is here only *Declared* to have been *Eſtabliſh'd* by the undoubted Fundamental Laws of this Kingdom; *i.e.* by ſuch Laws as are the Foundation of the Government. Whoever therefore ſhall Affirm, That the Parliament hath a Coercive Power over the Perſon of the King, he alters the *Foundation* and *deſtroys* the Government.

*Secondly*, I do from this Statute obſerve, That their famous Axiom, *major ſingulis, minor univerſis*, will no longer ſupport their Cauſe, it being plain from this *Act*; That the King is *major univerſis* as well as *ſingulis*.

When our *Republican Clubs*, who talk ſo much of *Law*, ſhall have anſwer'd this *Statute*; they may then expect to hear further from me.

In *th'interim*, I ſhall recommend a *Text*, to be held forth in all their *Conventicles*, the next

next time of their meeting.

Prov. 24. 21, 22. *My Son, fear thou the Lord and the King, and meddle not with them that are given to change.*

*For their Calamity shall rise suddainly, and who knoweth the ruin of them both?*

From whence may be raised these good Obversations, *viz.*

Honesty is the best Policy,
and
Loyalty the best Religion.

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*FINIS.*

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